



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

June 6, 2005

Snohomish County Public Works
Surface Water Management
ATTN: Vaughn Collins
2731 Wetmore Avenue - 3rd Floor
Everett, WA 98201

REGISTERED MAIL
RR 359 893 584 US

Dear Mr. Collins:

RE: **Order # 2505.**

U.S. Army Corps Reference No. 200401408
Water Quality Certification/Coastal Zone Consistency Determination for Snohomish County
Public Works, North Meander Slough Reconnect Project, North Meander Slough, Snohomish
County, Washington

The request for certification for proposed work in and adjacent to the North Meander Slough has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rebekah Padgett at (425) 649-7129. Written comments can be sent to Rebekah at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program

Enclosure

JS:RP:rc

cc: Susan Glenn, U.S. Army Corps of Engineers
David Brock, WA Department of Fish and Wildlife
Stephanie Kramer, Office of Archaeology and Historic Preservation



IN THE MATTER OF GRANTING A)	ORDER # 2505
WATER QUALITY)	Corps Reference No. 200401408
CERTIFICATION /)	Reconnection of North Meander Slough to the
MODIFICATION TO)	Stillaguamish River and Cook Slough to create
Snohomish County Public Works)	approximately 4 acres of off-channel rearing and
in accordance with 33 U.S.C. 1341)	refuge habitat for salmonids; Section 1, T. 31 N.,
FWPCA § 401, RCW 90.48.120, RCW)	R. 4 E, Snohomish County, Washington.
90.48.260 and Chapter 173-201A WAC		

TO: Snohomish County Public Works
ATTN: Vaughn Collins
2731 Wetmore Avenue - Suite 300
Everett, WA 98201

On June 6, 2005, the U.S. Army Corps of Engineers issued a Nationwide Permit (NWP) #27 "Stream and Wetland Restoration Activities" to Snohomish County Public Works for enhancement work that will reconnect North Meander Slough to the Stillaguamish River. During review of the project, the Department of Ecology (Ecology) determined that an individual Section 401 water quality certification would be required. Ecology issued a public notice pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401) on April 12, 2005. One comment was received.

The proposed project consists of creating two openings in the Slough as follows: a dike separating North Meander Slough from Cook Slough will be modified to create an inlet structure, and a channel will be excavated connecting the North Meander Slough to the Stillaguamish River. The project also includes excavation of 36,400 cubic yards of sediment deposits to about 10 feet below the existing ground surface from 4.5 acres of the streambed of the Slough to re-configure the channel, placement of large woody debris throughout the channel, and riparian planting to enhance habitat. The excavated materials will be placed on adjacent uplands.

AUTHORITIES:

For purposes of this Order, the term "Applicant" shall mean Snohomish County Public Works and its agents, assigns, and contractors.

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);

2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

CONDITIONS OF ORDER # 2505 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.260, RCW 90.48.120, and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

- A1. The Stillaguamish River, WRIA #5, is classified as Class A waters of the state. Certification of this proposal does not authorize Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. Furthermore, nothing in this certification shall absolve Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

Stillaguamish River has been identified on the current 303(d) list as exceeding state water quality standards for fecal coliform and temperature. This proposed project shall not result in further exceedances of the standards.

B. Project Mitigation:

- B1. Impacts to aquatic resources shall be mitigated by the project itself through measures described in the following documents, except as modified by this Certification and Order, and including any approved revisions:
 - a) Biological Assessment, Snohomish County Dept. of Public Works, November 2004
 - b) Appendix D, North Meander Reconnection 30% plans, OTAK for Snohomish County Dept. of Public Works
 - c) Appendix F, Wetland Report and Functional Assessment, Snohomish County Dept. of Public Works, January 2005

B2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for the project:

- a) Construction Plans: Final Construction Plans (100% documents) shall be submitted to Ecology for review and approval, with copies to the local jurisdictions and the Army Corps of Engineers. Ecology shall review and approve these Final Construction Plans prior to commencement of clearing. The plans shall be sent to Rebekah Padgett at Ecology's Northwest Regional Office, 3190-160th Ave. SE, Bellevue, WA. 98008-5452.
- b) Preconstruction Meeting: The Applicant's wetland ecologist shall be present at the pre-construction meeting for the project.
- c) Record Report and Drawings: A report documenting the final design of the project areas shall be prepared when site construction and planting is completed. The report shall include the following:
 - i. Vicinity map showing site access;
 - ii. Final site topography;
 - iii. Hydrologic design;
 - iv. Drawings that clearly identify the boundaries of the project area;
 - v. The installed planting scheme showing densities, sizes, and locations of plants, as well as plant sources and the time of planting;
 - vi. Photographs of the area taken from permanent reference points;
 - vii. Locations of photopoints, sampling and monitoring sites;
 - viii. An analysis of any changes to the project plan that occurred during construction.

A copy of the Record Report shall be sent to Rebekah Padgett at Ecology within 60 days of completing construction, and in no case later than December 31, 2006. The project monitoring period shall commence with Ecology's acceptance of the Record Report.

- d) Field Supervision: The wetland grading activity and plant installation shall be field-supervised by the Applicant's wetland ecologist to ensure proper elevations are achieved and plants are appropriately placed.

- e) Permanent Protection: Applicant shall provide documentation showing the means of permanent protection for the project site (such as a conservation easement or similar) to Rebekah Padgett at Ecology within 60 days of completing construction, and in no case later than December 31, 2006.
- f) Performance Standards: The project shall be deemed to have met its performance standards when the final wetland rating using the Washington State Wetland Rating System for Western Washington (2004) confirms no loss of overall wetland functions compared to the pre-development wetland rating. Specific performance standards for the planted areas at the end of the 10-year monitoring period shall include 80% plant survival, 65% cover in tree and shrub communities, 85% cover in emergent plant communities, and less than 15% cover of non-native invasive species.
- g) Monitoring: Monitoring to insure that the project is successful shall be performed as described in the 2003 Snohomish County Surface Water Management Vegetation Monitoring Manual. Monitoring shall include a general site assessment, plant mortality, plant vigor, plant growth, and vegetative cover. Monitoring shall take place over a period of ten years, with monitoring performed in years 1, 2, 3, 5, 7 and 10. In addition, the wetland shall be rated using the Washington State Wetland Rating System for Western Washington in years 5 and 10 to confirm no loss of overall wetland functions compared to the pre-development wetland rating. A habitat survey shall be performed following construction and repeated after several years to show how sediment deposition, vegetation changes and large woody debris movement have changed habitat. Sediment and temperature will be monitored as described in the Wetland Report and Functional Assessment (January 2005). Copies of all monitoring reports shall be submitted to Ecology at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, as well as to the U.S. Army Corps of Engineers.
- h) Maintenance: Maintenance of the project site is necessary to ensure that the project is successful. Maintenance measures may include irrigation, removal and replacement of dead and dying plants, removal of non-native invasive species, and protection of plants from herbivores. Irrigation may be required from June through Mid-October for the first growing season following plant installation, to insure a minimum of one inch of water per week. Irrigation will not be necessary on those weeks where rainfall at the site exceeds one inch per week. Weed and pest management shall be performed as described in the Weed Management Plan, Sheet 13 of 15 of the Construction Plans, or as subsequently revised for the 100% Construction Plans.
- i) Contingency Measures: Applicant is responsible for the success of the wetland conversion. If some aspect of the project is not successful at the end of the monitoring period, then contingency measures will be necessary, such as re-grading, replanting or otherwise altering the design for project success. Contingency measures shall be approved by Ecology and the Corps prior to implementation.

- j) Access: Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, and necessary data collection to ensure that the wetland construction and monitoring plans are implemented as approved.

C. Short Term Modification to Water Quality Standards:

- C1. Construction activities when connecting the newly-excavated channel to Cook Slough at the inlet and the Stillaguamish River at the outlet may cause water quality effects that will exceed the state water quality criteria specified in Chapter 173-201A WAC. Per WAC 173-201A-110, Ecology may grant a modification to the standards to allow for exceedances of the criteria on a short-term basis when necessary to accommodate essential activities. The Stillaguamish River and Cook Slough are classified as Class A and the criteria of that class apply except as specifically modified by this Order. The turbidity in Class A waters shall not exceed 5 NTU over background when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
- C2. Mixing zones (or zones of disturbance) can be authorized to allow for temporary exceedances of certain water quality standards in state waters immediately adjacent to a permitted project, after all known, available, and reasonable methods of prevention, control and treatment have been implemented. The mixing zone is allowed for the disturbance of in-place sediments during and immediately after necessary in-water construction activities. For this project, a mixing zone of 500 feet from the downstream edge of the in-water activities is considered reasonably sufficient to allow for temporary water quality exceedances. Within the mixing zone, the Class A standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.
- C3. This modification shall remain in effect for the entire duration of time necessary to complete the work. However the waiver of specified standards within the mixing zone is intended for brief periods of time (such as a few hours or a day) and is not an authorization to exceed those standards for the entire duration of construction. In no case does the waiver authorize degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses, including fisheries habitat, or causes long-term harm to the Stillaguamish River.
- C4. Water Quality Sampling and Monitoring: A water quality monitoring plan for in-water construction activities shall be submitted to the Department of Ecology, Federal Permit Coordinator, for review by July 15, 2005. Ecology may require changes and modifications to the plans.

The water quality monitoring plan shall include the following minimum specifications:

- a) Name and phone number of person responsible for monitoring;
- b) Map of sample locations (minimum of background and 500 feet downstream). If exceedances are detected at 500 feet, additional sampling shall occur further downstream;
- c) Parameter(s) to be monitored; turbidity and dissolved oxygen at a minimum;
- d) Sample method; and
- e) Sample frequency: Applicant shall conduct water quality monitoring on a daily basis before commencing in-water work to determine background; and every three hours during removal of the "plug" at the upstream and downstream ends of the new channel, and any other work that may affect Cook Slough or the Stillaguamish River. Sampling may be reduced if no exceedances are detected.

C5. Reporting: Results of water quality sampling, as determined by the water quality monitoring plan, shall be forwarded to Department of Ecology on a weekly basis to Rebekah Padgett at (425) 649-7129, e-mail rp461@ecy.wa.gov or fax (425) 649-7098.

C6. If water quality standards are exceeded at any time during construction, the applicant shall:

- a) Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- b) Notify Ecology of the failure to comply within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.
- c) Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000.
- d) Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information. The report shall be submitted to: Rebekah Padgett, Department of Ecology, 3190 - 160th Ave SE, Bellevue, WA 98008, or fax (425) 649-7098.

D. Construction Stormwater Management:

- D1. Erosion Control: All conditions of the Construction Stormwater NPDES Permit No. SO3-006059 for this project shall be implemented.
- D2. The following erosion control and storm water measures shall be implemented to prevent any uncontrolled discharge to state waters, and additional measures shall be implemented as necessary to control runoff from the site:
- a) All sediment control devices including sediment ponds, perimeter silt fencing, and other sediment trapping Best Management Practices (BMPs) shall be installed before grading.
 - b) All exposed and unworked soils shall be stabilized by suitable and timely application of BMPs.
 - c) Adjacent and downstream properties shall be protected from sediment deposition from wind or water action.
 - d) All temporary conveyance channels and pipe outlets shall be stabilized to prevent erosion.
 - e) All construction access routes that are subject to water or wind erosion shall be stabilized.
 - f) All temporary and permanent erosion control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function.
 - g) All temporary BMPs and accumulated sediments shall be removed or stabilized after final site stabilization.
- D3. Construction:
- a) Turbid water generated from construction activities, including turbid dewatering water, shall not be discharged directly to waters of the state. Temporary sediment traps shall be used to allow the turbid water to settle, and shall not be discharged until the water meets the water quality standards for turbidity.
 - b) Clean water may be discharged directly to waters of the state after testing has been completed to determine compliance with the water quality standards. The discharge outfall method shall be designed and operated so as to not cause erosion or scour in the stream channel, banks or vegetation. The flow rate of discharge water into flowing water shall not exceed one-tenth of the natural flow rate of the water at the time of

discharge.

- c) Impacts to bank and shoreline vegetation shall be limited to the maximum extent possible, and replanted where destroyed or damaged.
- d) Approach material used to access a project sites shall be of clean composition and placed in a manner to prevent erosion and siltation that might result from high water and/or heavy rains. Approach material shall not be placed in wetlands or other waters of the state unless authorized by Ecology.
- e) Prior to clearing and grading in or near wetlands, the wetlands to remain undisturbed shall be protected from construction impacts. Bright orange construction fencing shall be installed prior to site clearing to mark the edge of the existing wetlands and stream channels to be protected. All project staff shall be trained to recognize the construction fencing that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered.
- f) Geotextile shall be placed on the temporary access road, then rock placed on top of the geotextile, to allow easier removal of the temporary access road following construction.
- g) All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- h) Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters.

D4. Construction Stormwater Monitoring:

- a) Discharges from construction activities shall be monitored for compliance with the water quality standards during project construction. The Applicant shall implement and comply with the Monitoring Plan, and any additional requirements added by Ecology.
- b) The Construction Stormwater Monitoring Plan shall include the following:
 - i. The location of all construction activities at the site that may have a discharge (e.g. dewatering water, construction stormwater, etc.) to surface water or ground water shall be identified;
 - ii. Monitoring points shall be indicated and shall include the following locations:

- At the discharge point;
 - 150 feet down current of the discharge; and
 - Background
- iii. All parameters that will be monitored (at a minimum the monitoring parameters shall include DO and turbidity, and pH if concrete work is involved);
- iv. The frequency of monitoring;
- v. The protocol used at the site for collecting samples, testing, recording rainfall (e.g. 0.5 inches per 24 hours during a rain event), noting and predicting weather conditions, and documenting the results.
- c) The Applicant shall retain the monitoring plan on site during construction activities or within reasonable access to the site and make it immediately available upon request by Ecology.
- d) The monitoring plan shall be updated as necessary to adequately represent site changes.
- e) Monitoring results shall be logged and retained on site during construction activities, and shall be immediately available upon request by Ecology.

E. Emergency/Contingency Measures:

- E1. In the event Applicant is unable to comply with any of the permit terms and conditions due to any cause, Applicant shall:
- a) Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
 - b) Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.
 - c) Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

d) Compliance with this condition does not relieve Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

F. Notification:

F1. Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of placing fill in wetlands or other waters of the state, and within 14 days after completion of construction at each project site and mitigation site. Notification can take place by e-mail to rp461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.

G. General Conditions:

G1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

G2. Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.

G3. Applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.

G4. Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

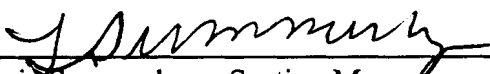
G5. This Order is valid for a period of not more than five years after the signature dated on the last page of this Order.

- G6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors. To avoid violations or non-compliance with this Order, Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit, and any subsequent revision or Ecology-approved plans.
- G7. Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- G8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- G9. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

Appeal Process:

Any person aggrieved by Order # 2505 may obtain review thereof by appeal. Pursuant to Chapter 43.21B. RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 6/6/05 at Bellevue, Washington.



Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington